CH 51 (3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

C.R. No. 303 /2003.

APPLICANT PLAINTIFF : Balamdina d/o Luis Uraon, aged about 60 years, r/o village Jhingo, P.S. & Tehsil Rajpur, Distt. Surguja, C.G. through authorised person (Power of Attorney Holder) Rejina Toppo d/o Karlus Toppo, aged about 60 years, r/o village Jhingo, P.S. & Tehsil Rajpur, District Surguja, C.G.

P. R. No. 2061/03
Presented by Shri A.K. Prasad
dated 10/09/03

V E R S U S

NON-APPLICANTS DEFENDANTS : 1. Kumari Parvati Toppo d/o Late Sanroop Uraon, age 32 years, Occupation-Service, original r/o village Gahna Dand, P.O. Padhi, Tehsil Ramanujganj, Distt. Surguja, C.G.

(ORIGINAL DFD. NO.3)

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2. The State of Chhattisgarh, through Collector, Surguja, Ambikapur, C.G.

(ORIGINAL DFD. NO.2)

CIVIL REVISION UNDER SECTION 115 OF THE CODE OF CIVIL PROCEDURE.

X-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक C.R. 303 सन् 2003

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

17.03.2005: -

Smt. Hamida Siddiqui, learned counsel for the applicant.
Shri A.K.Prasad, learned counsel for respondent No.1.
Shri J.D.Bajpai, learned counsel for the State/respondent No.2.

This revision has been preferred by the applicant as she is aggrieved by the order dated 01.07.2003 passed in Misc. Civil Appeal No.02/2003 by the IInd Addl.District Judge, Ambikapur,District-Sarguja, arising out of order dated 20.12.2002 passed in M.J.C.(Civil) No.05/2001 by the Civil Judge,Class-II,Ambikapur,District-Sarguja and by which the appeal preferred by the non-applicant No.1 against the order passed by the Civil Judge,Class-II dismissing the application for setting aside the ex-parte decree passed against the non-applicants, was allowed and ex-parte judgment and decree dated 12.09.2001 passed by the Civil Judge,Class-II has been set aside.

Brief facts of the case is that the suit was filed by the applicant namely Balamdina before the trial Court and an ex-parte decree on 12.09.2001 was passed against the non-applicant. The non-applicant namely Ku.Parvati Toppo filed an application under Order 9 Rule 13 of the C.P.C. along with an application under Section 5 of the Limitation Act on 31.10.2001 averring that she was suffering from jaundice and she came to know about ex-parte decree being passed only on 28.09.2001 and regarding the ex-parte decree, she applied for certified copy of the same on 11.10.2001. Thereafter, the non-applicant approached her Advocate and filed the instant application for setting aside the ex-parte decree passed on 12.09.2001 and this application was opposed by the applicant.

(पीछे देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(59)

आदेश पत्रक

मामला क्रमांक C.R.303 सन् 2003

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित –2–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned Civil Judge dismissed the application on the ground that the reason assigned by the non-applicant for setting aside the ex-parte decree is not sufficient and reason for delay in filing the appeal is also not sufficient and accordingly, dismissed the application filed under Section 5 of the Limitation Act and as a consequence, the application for setting aside the ex-parte decree was also dismissed.

Against the above order, the non-applicant preferred a misc. appeal and by the impugned order the misc.appeal was allowed against which the present revision has been filed.

Learned counsel for the applicant has mainly challenged this order on the ground that the trial Court passed an order dated 20.12.2002 and dismissed the application filed under Section 5 of the Limitation Act and the application for setting aside the ex-parte decree has not been dismissed on merits. Therefore, no appeal was maintainable as per Order 43 Rule 1 (d) of the C.P.C. as the non-applicant ought to have preferred a revision against the order passed by the Civil Judge.

In reply to the contention of the applicant, the non-applicant submits that while dismissing the application under Section 5 of the Limitation Act, the Civil Judge also dismissed the application under Order 9 Rule 13 C.P.C and therefore appeal was rightly preferred under Order 43 Rule 1 (d) of C.P.C. and the same was maintainable.

I have heard learned counsel for the respective parties.

(पीछे देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(58)

आदेश पत्रक

मामला क्रमांक C.R.303 सन् 2003

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The contention of the applicant that since the application under Section 5 of the Limitation Act was dismissed, the non-applicant ought to have preferred a revision under Section 115 of the C.P.C., has no force because the effect of the order passed by the Civil Judge, Class -II dismissing the applicant under Order 9 Rule 13 of C.P.C. is appealable under Order 43 Rule 1 (d) of C.P.C. and the ground for dismissal of the application for setting aside ex-parte decree was that the applicant could not explain the delay and therefore, in my opinion, the learned A.D.J. has not committed any illegality by entertaining the appeal.

Learned counsel for the non-applicant relying upon the judgment of the Apex Court reported in ***2002 AIR SCW 978*** in the matter of ***Ram Nath Sao alias Ram Nath Sahu and others Vs. Goberdhan Sao and others*** submits that the matter of setting aside ex-parte decree is subject to the satisfaction of the Court when there is sufficient ground and it should not be interfered in exercise of the revisional jurisdiction under Section 115 of the C.P.C. Even learned counsel for the applicant does not advance any arguments that the appellate Court has committed any illegality while recording a finding on merits.

In view of the above circumstances, there is no substance in the present revision and it deserves to be dismissed and it is dismissed accordingly.

Sd/-
DHIRENDRA MISHRA
Judge

(पीछे पढ़िये)